

7-2500-18018-2
P-5733/C-07-296
P-5733,6403/M-07-354

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of a Complaint and Request
for Expedited Hearing of Neutral Tandem,
Inc., Against Level 3 Communications

FIRST PREHEARING ORDER

In the Matter of the Application of Level 3
Communications, LLC, to Terminate
Services to Neutral Tandem, Inc.

A Prehearing Conference was held before Administrative Law Judge Richard C. Luis at 9:30 a.m. on May 31, 2007, at the Public Utilities Commission, 350 Metro Square Building, 121 Seventh Place East, St. Paul, Minnesota.

Appearances:

Gregory Merz and Lesley Lehr, Attorneys at Law, Gray, Plant, Mooty, Mooty & Bennett, 80 South Eighth Street, Suite 500, Minneapolis, Minnesota 55402, and Greg L. Rogers, Director, State Regulatory Affairs, Level 3 Communications, LLC, 1025 Eldorado Boulevard, Broomfield, Colorado 80021, appeared on behalf of Level 3 Communications, LLC (Level 3).

William E. Flynn, Attorney at Law, Lindquist & Vennum, PLLP, 80 South Eighth Street, Suite 4200, Minneapolis, Minnesota 55402, and John R. Harrington, Attorney at Law, Jenner & Block, LLP, 330 North Wabash, Suite 4700, Chicago, Illinois 60611, appeared on behalf of Neutral Tandem, Inc. (Neutral Tandem).

Lillian Brion, Rates Analyst, participated on behalf of the Commission staff.

Discussion was held among the participants concerning the proposed schedule, the suitability of bifurcating this proceeding, and various procedural issues.

Intervention

1. The parties to this matter as named in the Commission's Notice and Order for Hearing issued May 9, 2007 are Level 3 and Neutral Tandem.¹ A request to intervene has been received from the Minnesota Department of Commerce (Department). The Department is entitled to intervene as of right and is **ADMITTED** as a party to this proceeding. There have been no other Petitions to Intervene submitted by anyone seeking to become a party to this matter.

2. Persons who wish to intervene in this proceeding are requested to file a written Petition to Intervene with the Administrative Law Judge no later than Thursday, June 14, 2007, in the manner set out in Minn. R. 1400.6200. Any objections to the Petitions shall be filed by June 21, 2007. The Petition shall be served upon all existing parties and the Commission in the manner set out in this Order, below. A Notice of Appearance shall be filed with the Petition.

Schedule

5. In its filings before the Prehearing Conference, Level 3 included a Memorandum requesting that this matter be bifurcated to first address the disconnection issue.² At the Prehearing Conference, Neutral Tandem requested the opportunity to respond in writing to Level 3's arguments and was granted until June 6, 2007 to file its response. Due to the limited time available in the proposed schedule, the following schedule is tentatively adopted, subject to change in the event that Level 3's bifurcation request is granted.

6. Subject to the potential for revision discussed in the foregoing Finding, the following schedule is adopted:

Intervention Deadline	June 14, 2007
Pre-Filed Direct Testimony	June 14, 2007
Department Reply	July 12, 2007
Level 3 and Neutral Tandem Rebuttal Testimony	July 24, 2007
Evidentiary Hearing	July 31 – Aug.1, 2007
Posthearing Briefing Schedule	To be determined

¹ PUC Notice and Order for Hearing, issued May 9, 2007 (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4052545>).

² Level 3 Communications, LLC's Memorandum Regarding Proposed Scope of the Contested Case Proceeding filed May 29, 2007 (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4061521>).

6. The Evidentiary Hearing will begin on July 31, 2007, at 9:30 a.m. at the Public Utilities Commission.

Discovery

7. All requests for information shall be made in writing to the person from whom the information is sought with a copy of the request provided to all parties of record. The responding party shall provide the information to the requesting party within eight business days of receipt. Copies of the requests and responses shall be sent to all parties of record. Copies of the requests and the responses should NOT be filed with the Administrative Law Judge or the Court Reporter. Only public versions of requests and responses shall be sent by electronic mail.

8. In the event the information cannot be supplied within eight business days, the responding party shall notify the requesting party in writing within four days of the request of the reason(s) it can not provide the information, and the two parties shall work out a schedule for compliance. Requests and responses may be sent by facsimile transmission or electronic mail, with the assent of the recipient.

9. Information Requests and responses received by electronic mail or U.S. mail before 3:00 p.m. will be considered received the actual day received. Information requests and responses received after 3:00 p.m. will be considered received the following business day. A "business day" is defined as Monday through Friday, except for Minnesota state holidays. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party.

10. There shall be a continuing obligation to update and supplement information responses.

11. Parties asked to provide information considered confidential may request that the Administrative Law Judge issue a Protective Order. In the event such an Order is issued, parties will comply with the terms of that Order in handling confidential information.

12. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Hearings on such motions may be scheduled by email and conducted by telephone conference call. Telephone numbers and email addresses of counsel have been included, where available, on the service list to assist in this process.

Prefiled Testimony

13. Prefiled testimony shall be designated and received as hearing exhibits. The sponsoring party will provide the unique E-file system identifying number of the prefiled document and the Administrative Law Judge will assign a hearing exhibit number to that document. Prefiled testimony that is amended or that is not offered into the record shall be considered withdrawn and the sponsoring witness may not be cross-examined concerning the withdrawn testimony. Except for cause shown, all substantive revisions or corrections to any prefiled testimony shall be filed with the Administrative Law Judge and served on the parties no later than three days before the evidentiary hearing starts. E-mail may be used to accomplish this service in an expeditious fashion (where e-mail addresses are available). When E-filing cannot be completed prior to the hearing, a hearing exhibit number will be reserved for that testimony and assigned once E-filing is completed. Any hearing exhibit that is E-filed after the hearing is not required to be served to the service list.

Order of Testimony

14. Unless the parties agree otherwise, the order of testimony shall be: Level 3, Neutral Tandem, intervenors (in order of intervention), and the Department. Questioning of the witnesses shall proceed in the same order, subject to change by agreement of the parties or further order of the Administrative Law Judge.

15. If a witness needs a day certain to offer testimony, the sponsoring party should submit to the Administrative Law Judge and other parties a request for testimony on a day certain.

Examination of Witnesses

16. Witnesses shall be allowed reasonable time to summarize their prefiled testimony and offer surrebuttal testimony through direct examination by counsel. For good cause shown, witnesses will be permitted to respond to any new matters not addressed in prefiled testimony through direct examination by counsel.

17. Parties shall examine and cross-examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through any one representative chosen by the party.

18. Except for good cause shown, objections by any party relating to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony shall be considered waived unless the objecting party states its objection by motion filed with the Administrative Law Judge and served on the parties, no later than July 27, 2007.

Procedure

19. The rules of the Office of Administrative Hearings govern the conduct of the hearings, and the Professionalism Aspirations adopted by the Minnesota Supreme Court will be observed.

Filing of Documents

20. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier. Wherever possible, prefiled testimony and exhibits must be in a format capable of being E-filed with the Office of Administrative Hearings, the Public Utilities Commission, and the Department of Commerce (E-File system). Where an exhibit is not in a format that can be accepted by the E-File system, the sponsor shall E-file a placeholder document that describes the exhibit.

21. All documents, including Prefiled Testimony **but excluding information requests and responses**, shall be filed as follows:

- A. The official record copy shall, wherever feasible, be filed using the E-file system. Prior to the issuance of the Report of the Administrative Law Judge, any exhibit that is not E-Filed will be filed by delivery or mailing to the Administrative Law Judge.
- B. Prior to the issuance of the Report of the Administrative Law Judges, one courtesy copy of each filing shall be delivered or mailed to:

Administrative Law Judge Richard C. Luis
Office of Administrative Hearings
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

- C. After the Administrative Law Judges' Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission, in the manner provided for by the Commission.

22. Copies of all documents shall be served on the persons listed on the attached service list, in the number indicated. E-filing is sufficient service on those persons so indicated on the official service list. The list will be revised as necessary by the Office of Administrative Hearings. Service shall be made according to the most current service list provided to the parties by the Office of Administrative Hearings.

23. Pursuant to Minn. R. 1400.5100, subp. 9, and Minn. R. 7829.0400, subp. 1, the effective date of filing shall be the date the document is mailed by

U.S. Mail, delivered to the Executive Secretary of the Commission, or E-filed with the Commission. Filings to the Administrative Law Judge shall be accomplished by E-filing, followed by mailing or delivery of a courtesy copy, except as provided in Findings 21 and 22, above.

24. Proof of service shall be filed with each filed document or within three business days thereafter. Parties using the E-filing system must retain the unique document identifier as proof of service through that system. No document demonstrating proof of E-filing should be filed, as the E-file system is self-authenticating.

25. Hard copies of trade secret and other nonpublic data shall be transmitted by U.S. Mail or courier. If nonpublic data is filed with the Administrative Law Judge or Commission, it shall be prepared and marked in accordance with the Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data, which is available at: <http://www.puc.state.mn.us/docs/tradsecret.pdf>.

Court Reporter

26. The Office of Administrative Hearings will arrange to have a court reporter present at the hearings. Parties must make arrangements with the Court Reporter to obtain a copy of the transcript.

Request for Accommodation

27. No person has requested accommodation for a disability or appointment of an interpreter. The Office of Administrative Hearings shall be notified promptly if either an accommodation or interpreter is needed.

Subpoenas

28. Requests for subpoenas for the attendance of witnesses or the production of documents shall be made in writing to the Administrative Law Judge pursuant to Minn. R. 1400.7000. A copy of the subpoena request shall be served on the other parties. A subpoena request form is available at www.oah.state.mn.us.

Dated this 7th day of June, 2007.

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Reported: Angie D. Threlkeld, RPR CRR
Shaddix and Associates
Transcript Prepared